

## § 1412.1

## 7 CFR Ch. XIV (1–1–11 Edition)

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AUTHORITY: 7 U.S.C. 7911–7918, 7951–7956, 8711–8719, 8751–8756, and 8781; and 15 U.S.C. 714b and 714c.

SOURCE: 73 FR 79289, Dec. 29, 2008, unless otherwise noted.

### **Subpart A—General Provisions**

#### **§ 1412.1 Applicability, statutory changes, interest, and contract provisions.**

This part governs: How base acres and farm program payment yields are established or adjusted for the purpose of calculating direct and counter-cyclical payments for wheat, corn, grain sorghum, barley, oats, upland cotton, rice, peanuts, soybeans, sunflower seed,

rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, pulse crops, and other designated oilseeds as determined and announced by the Commodity Credit Corporation (CCC), for the years 2008 through 2012; the month when producers on a farm may enter into annual Direct and Counter-cyclical Program (DCP) or Average Crop Revenue Election (ACRE) program contracts with CCC for each of the years 2008 through 2012, as applicable; and the peanut crop acreage bases and yields in order to receive 2008 through 2012 direct and counter-cyclical payments. Payments otherwise provided for in this part are subject to changes made by statute in rates, conditions, and eligibility notwithstanding any contract made under this part. However, any such modification may, as determined by the Deputy Administrator, allow producers the opportunity to withdraw from the contract. Also, if any refund comes due to CCC under this part, interest will be due from the date of the CCC disbursement except as determined by the Deputy Administrator. The provisions of this section will apply notwithstanding any other provision of this or any other part. In order to receive payment under this part a participant must comply with the regulations in this part and any additional requirements imposed by the program contract.

#### **§ 1412.2 Administration.**

(a) The program is administered under the general supervision of the Executive Vice-President, CCC, and will be carried out by Farm Service Agency (FSA) State and county committees (State and county committees).

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee may take any action required by the regulations of this part that the county committee has not taken. The State committee will also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in

accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee will preclude the Executive Vice President, or the Deputy Administrator, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator has the authority in individual cases to authorize State and county committees to waive or modify deadlines (except statutory deadlines) and other non-statutory requirements, in cases where lateness or failure to meet such other requirements does not adversely affect operation of the program. Producers and participants have no right to seek an exception under this provision. The Deputy Administrator's refusal to consider cases or circumstances or decisions not to exercise this discretionary authority under this provision will not be considered an adverse decision and is not appealable.

(f) A representative of CCC may execute the FSA forms entitled "Direct and Counter-Cyclical Program Contract" and "Average Crop Revenue Election Program Contract" only under the terms and conditions determined and announced by the Executive Vice President, CCC. Any contract that is not executed in accordance with such terms and conditions, including any purported execution prior to or after the dates authorized by the Executive Vice President, CCC, is null and void and will not be considered to be a contract between CCC and the operator or any other producer on the farm.

#### § 1412.3 Definitions.

The definitions set forth in this section are applicable for all purposes of administering the DCP. The terms defined in part 718 of this title and part 1400 of this chapter are also applicable, except where those definitions conflict with the definitions set forth in this section.

Where there is a conflict or a difference in definitions specified in this

part and those that apply to the Average Crop Revenue Election (ACRE) program specified in subpart G of this part, the regulations of subpart G of this part will apply to the ACRE program.

*ACRE guarantee price* means the simple average, as determined by CCC, of the national average market prices of the covered commodity or peanuts for the most recent two crop years preceding the relevant current crop year. For example, for the 2009 program the relevant crop year is the 2009 crop year. Therefore, for the 2009 program, the ACRE guarantee price for the covered commodity or peanuts is equal to the simple average of the national average market prices of the covered commodity or peanuts for the 2007 and 2008 crops.

*ACRE plug yield* means the resulting yield determined by taking the applicable NASS county average yield for the covered commodity or peanuts, by practice if applicable, and multiplying it by 95 percent. The ACRE plug yield may be used by a farm in establishing an initial benchmark farm yield or reporting actual production in accordance with instructions issued by the Deputy Administrator. The ACRE plug yield is also used on a farm for a covered commodity or peanuts in a year where there are no acres of the covered commodity or peanuts planted. The ACRE plug yield may be found on the FSA Web site at: <http://www.fsa.usda.gov/dcp/> by clicking "ACRE County Yields." ACRE plug yields are used in benchmark farm yields. If the National Agricultural Statistical Service (NASS) data is not available for a particular practice of a covered commodity or peanuts from which an ACRE plug yield can be established, the Deputy Administrator may establish an ACRE plug yield for the practice of the covered commodity or peanuts based a computation of multiplying 95 percent times the yield determined based on production data available from FSA farm records in the county, or in the event sufficient records do not exist, another data source determined appropriate by the Deputy Administrator.